IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5586 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALITABEN SHANTILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5586 of 2004

MR DC DAVE for Petitioner No. 1-6

MR VM PANCHOLI APP APP for Respondent No. 1

MR HM PARIKH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 12/07/2004

ORAL JUDGEMENT

1. Rule. Mr. VM Pancholi, learned APP appears and

waives service of notice of rule on behalf of respondent No.1 State whereas Mr. HM Parikh, learned advocate appears and waives service of notice of rule on behalf of respondent No.2.

2. By filing instant petition under Section 482 of the Code of Criminal Procedure ('the Code' for short) the petitioners against whom offence is registered vide CR No.04/04 at Anand Mahila Police station for commission of the alleged offences under section 498-A , 506 (2) and 114 of the IPC and sections 3 and 7 of the Dowry Prohibition Act ('the Act' for short) on the basis of the complaint filed by respondent No.2, have prayed to quash and set aside the said complaint on the grounds stated in the petition.

3. At the time of hearing of this petition, Mr. DC Dave, learned advocate of the petitioners and Mr. HH Parikh, learned advocate for Mr. HM Parikh, learned advocate of respondent No.2/ original complainant, jointly submitted that the matter has been amicably settled between the parties and thereby dispute with respect to matrimonial matter has come to an end. It is also submitted by them that respondent No.2 who is the daughter in law of petitioner Nos.1 and 2 has agreed to come to her matrimonial home and she will be taken to America where her husband is residing. Therefore appropriate orders with regard to quashing of the said complaint may be passed. It is therefore urged to pass appropriate orders. It is also pointed out by them that respondent No.2/original complainant and her father are also present in the Court and as a token of having amicably settled the matrimonial dispute between the parties, the father of respondent No.2, and respondent No.2 have filed affidavits, inter alia, stating that the dispute between the parties has been amicably settled.

4. Mr. VM Pancholi, learned APP states that since the quashing petition is filed against the complaint filed by respondent No.2, ventilating her grievance about matrimonial dispute which is settled between the parties, appropriate and suitable orders may be passed in view of the principles enunciated by the Supreme Court.

5. Having heard the learned advocates of the parties and having perusal of the averments made in the petition as well as in the complaint which is impugned, and more particularly, affidavits sworn by respondent No.2/original complainant and her father saying that the matrimonial dispute between the parties has been amicably settled and by virtue of the settlement respondent No.2

has decided to go to her matrimonial home from where upon obtaining Visa the petitioners will send her to America where her husband is permanently residing. Therefore, according to this court, if the matrimonial dispute is settled by way of reunion, the prayer made in this petition deserves to be granted.

6. In the case of B.S. Joshi and others v. State of Haryana and another, (2003) 4 SCC 675, the Supreme Court has held that Section 320 of the Code does not limit or affect the powers under Section 482 of the Code. It is also held that inherent powers under Section 482 of the Code can be exercised in relation to matrimonial disputes if the parties have settled the dispute amicably. It is also observed therein that the Court is duty bound to encourage genuine settlements of matrimonial disputes. However, Supreme Court has said that utmost care and caution is required to be taken while invoking such powers. Applying the principles laid down by the Supreme Court in the above motioned case to the facts of the present case, it cannot be said that the amicable settlement has not been arrived at between the parties. Respondent No.2/original complainant who is also present in this court has stated on oath that dispute between her and her in-laws has been settled amicably and therefore she has decided to go to her matrimonial home and after obtaining Visa, from her matrimonial home, she will be sent to America where her husband is permanently residing. Therefore, this Court has examined the genuineness of this settlement. Respondent No.2 and her father have stated the aforesaid facts on oath.

7. In aforesaid view of the matter, there is no impediment on the part of this court to accede to the relief prayed for in this petition.

8. Seen in he above context, the petition deserves to be allowed by granting the prayers made therein.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. Criminal Complaint No.04/04 registered with Anand Mahila Police station for the alleged offences under sections 498-A, 506 (2) and 114 of IPC and Sections 3 and 7 of the Act is quashed and set aside. Rule is made absolute accordingly.

10. At this stage, Mr. DC Dave, learned advocate of the petitioners states that passport of petitioner Nos.1 to 4 are lying with JMFC Anand and on behalf of respondent Nos.5 and 6, Rs.50,000 has been deposited in

the Court of learned JMFC, Anand. Therefore, petitioner Nos.1 to 4 will apply for getting their passport back and respondent Nos.5 and 6 will apply for refund of Rs.50,000/- and therefore suitable direction may be issued to the learned JMFC Anand in this regard. The learned JMFC Anand is, therefore, directed that if an application is moved by the petitioner Nos.1 to 4 for release of their passport and an application is moved by petitioner Nos.5 and 6 for refund of Rs.50,000/- the same shall be considered in accordance with law and having regard to the order passed by this court by which this Court has quashed the crime registered against the petitioners. D.S. permitted.

(A.M. Kapadia, J.)

(karan)